

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TROY ANTHONY PESINA,)	No. CV-10-441-JPH
)	
Plaintiff,)	ORDER DENYING PLAINTIFF'S
)	MOTION FOR PRELIMINARY
v.)	INJUNCTION AND TEMPORARY
)	RESTRAINING ORDER
MR. STOCKWELL, J. ROLLINS,)	
POWELL, and MR. McDONALD,)	(ECF No. 47)
)	
Defendants.)	
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BEFORE THE COURT is plaintiff's motion for a preliminary injunction and temporary restraining order, ECF No. 47, and defendants' response (ECF No. 51), noted for hearing without argument on September 30, 2011. Plaintiff is a prisoner at Airway Heights Correctional Center (AHCC). He proceeds pro se. Assistant Attorney General Kelly E. Konkright represents defendants. The parties consented to the Magistrate Judge's jurisdiction (ECF No. 37).

Plaintiff asserts he should immediately be provided with "adequate legal access and or assistance," be transferred to a facility with such access or assistance, and be reclassified. Plaintiff asserts he is currently housed in a segregation unit

ORDER DENYING MOTION FOR TEMPORARY
RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

1 (ECF No. 47 at 1-4). Defendants respond that plaintiff seeks
2 redress from parties who lack the power to perform the acts
3 requested and plaintiff has access to a law library through the
4 assistance of trained staff upon written request (ECF No. 51 at 1-
5 6).

6 II. STANDARD OF REVIEW

7 Under the Prison Litigation Reform Act, 18 U.S.C. § 3626
8 (PLRA), Plaintiff is not entitled to any prospective relief unless
9 this Court enters the necessary findings required by the Act. The
10 PRLA states: Prospective relief in any civil action with respect
11 to prison conditions shall extend no further than necessary to
12 correct the violation of the Federal right of a particular
13 plaintiff or plaintiffs. The court shall not grant or approve any
14 prospective relief unless the court finds that such relief is
15 narrowly drawn, extends no further than necessary to correct the
16 violation of the Federal right, and is the least intrusive means
17 necessary to correct the violation of the Federal right. The court
18 shall give substantial weight to any adverse impact on public
19 safety or the operation of a criminal justice system caused by the
20 relief. 18 U.S.C. § 3626 (a)(1)(A).

21 A "civil action with respect to prison conditions" means any
22 civil proceeding arising under Federal law with respect to the
23 conditions of confinement or the effects of actions by government
24 officials on the lives of persons confined in prison." 18 U.S.C. §
25 3626 (g)(2). "[T]he term 'relief' means all relief in any form
26 that may be granted or approved by the court" 42 U.S.C. §
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28 ORDER DENYING MOTION FOR TEMPORARY
RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

1 3626(g)(9).

2 In a civil rights case, injunctions must be granted sparingly
3 and only in a clear and plain case. The United States Supreme
4 Court has stated: Even in an action against private individuals,
5 it has long been held that an injunction is "to be used sparingly,
6 and only in a clear and plain case." When a plaintiff seeks to
7 enjoin the activity of a government agency, even within the
8 unitary court system, his case must contend with "the well-
9 established rule that the government has traditionally been
10 granted the widest latitude in the dispatch of its own internal
11 affairs." *Rizzo v. Goode*, 423 U.S. 362, 378 (1976)(citations
12 omitted).

13 This holding applies even more strongly in cases involving
14 the administration of state prisons. *Turner v. Safly*, 482 U.S. 78,
15 85 (1987). "Running a prison is an inordinately difficult
16 undertaking . . . peculiarly within the province of the
17 legislative and executive branches of government . . .
18 [S]eparation of powers concerns counsel a policy of judicial
19 restraint. Where a state penal system is involved, federal courts
20 have, as we indicated in *Martinez*, additional reason to accord
21 deference to appropriate prison authorities." *Id.* at 85, citing
22 *Procunier v. Martinez*, 416 U.S. 396, 405 (1974).

23 In order to justify the "extraordinary and drastic remedy" of
24 injunctive relief under Federal Rule of Civil Procedure 65, the
25 moving party bears a heavy burden. *Canal Authority of the State of*
26 *Fla. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). The moving

27
28 ORDER DENYING MOTION FOR TEMPORARY
RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

1 party must demonstrate that "he is likely to succeed on the
2 merits, that he is likely to suffer irreparable harm in the
3 absence of preliminary relief, that the balance of equities tips
4 in his favor, and that an injunction is in the public interest."
5 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).
6 It is no longer sufficient for the Plaintiff to assert a
7 possibility of success on the merits. *Id.* at 22.

8 **III. FACTS**

9 Plaintiff alleges he is being deprived of access to legal
10 materials. Defendants respond that access to legal materials is
11 provided; plaintiff must simply send a written request for
12 materials to the law library and an appropriately trained staff
13 person will route the materials to him in segregated housing.

14 Plaintiff also contends his segregation classification is
15 improper. To this, defendants respond (1) they lack the authority
16 to change a prisoner's classification (or to expand his access to
17 the law library); (2) plaintiff is in segregation pending transfer
18 to an institution that (unlike AHCC) has a closed custody unit,
19 Clallum Bay Correctional Center; and (3) plaintiff has not yet
20 been transferred because he has a September court date in Benton
21 County Superior Court, but will be transferred after that court
22 date ((ECF No. 51 at 1, 4-5).

23 **IV. DISCUSSION**

24 **A. Likelihood of Success on the Merits**

25 In order to establish a claim he was deprived of his
26 constitutional right to meaningful court access, a prisoner must
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28 ORDER DENYING MOTION FOR TEMPORARY
RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

1 show he was not given *either* adequate access to a law library or
2 adequate assistance from a person trained in the law. *Bounds v.*
3 *Smith*, 430 U.S. 817, 828 (1977). Plaintiff fails to make this
4 showing.

5 Similarly, plaintiff has not refuted defendants' assertion
6 that they lack the authority to change his classification, nor has
7 he shown he has properly exhausted his administrative remedies.

8 In light of these facts, Plaintiff cannot demonstrate a
9 likelihood of success on the merits. Plaintiff has been provided
10 meaningful access to the courts, as that right has been determined
11 by the United States Supreme Court. He has not shown defendants
12 have the authority to change his classification status. Finally,
13 plaintiff fails to show he has properly exhausted his
14 administrative remedies.

15 **B. Irreparable Injury**

16 Plaintiff seems to allege if his classification is not
17 changed he will suffer irreparable harm because his segregation
18 classification is depriving him of access to the law library.
19 However, the record demonstrates plaintiff has access to legal
20 materials even though his classification places him in housing
21 segregated from the general population. He cannot demonstrate he
22 will suffer irreparable injury if the requested relief is not
23 granted.

24 **C. Balance of Equities**

25 Plaintiff has not alleged any harm that would outweigh the
26 appropriate level of deference to the defendants. Plaintiff has
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28 ORDER DENYING MOTION FOR TEMPORARY
RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

1 not demonstrated an entitlement to the relief requested, nor has
2 he demonstrated that the actions taken by defendants harm him.
3 There is nothing in the record that indicates plaintiff made use
4 of a written request for legal materials. Balanced against this is
5 the reasonable procedure provided by defendants for prisoners to
6 access legal materials while housed in segregation units.
7 Plaintiff fails to show his current classification is capable of
8 being changed by these defendants.

9 **D. Public Interest**

10 Plaintiff offers no argument in support of his motion for
11 preliminary injunctive relief as to how the public interest favors
12 granting the requested relief.

13 **V. CONCLUSION**

14 Plaintiff fails to show he is being deprived of any
15 constitutionally protected right meriting the extraordinary remedy
16 of preliminary injunctive relief.

17 The Court therefore **ORDERS as follows:**

18 1. Plaintiff's Motion for Temporary Restraining Order and
19 Preliminary Injunction (**ECF No. 47**) **is DENIED.**

20 2. The Clerk of Court shall file this Order electronically
21 and provide a copy to the Plaintiff.

22 **Dated** this 30th day of September, 2011.

23
24 S/ James P. Hutton

25 JAMES P. HUTTON

26 UNITED STATES MAGISTRATE JUDGE

27
28 ORDER DENYING MOTION FOR TEMPORARY
RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

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ORDER DENYING MOTION FOR TEMPORARY
RESTRAINING ORDER
AND PRELIMINARY INJUNCTION